

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____)
FREE SPEECH COALITION, INC. et al.,) Civil Action No. 2:09-4607
)
Plaintiffs,) Judge Michael M. Baylson
)
v.)
) DEFENDANT’S MOTION FOR LEAVE
THE HONORABLE ERIC H. HOLDER, JR.,) TO FILE THE ATTACHED SECOND
Attorney General,) SUPPLEMENTAL BRIEF IN SUPPORT
) OF MOTION TO DISMISS
Defendant.)
_____)

Defendant hereby respectfully requests leave to file a Second Supplemental Brief, attached hereto, in support of defendant’s Motion to Dismiss. At the hearing on defendant’s Motion to Dismiss, the Court requested that the parties file supplemental briefs, not to exceed 10 pages, addressing various issues that the Court had identified durinsg oral argument. The Court set March 26, 2010, as the deadline for defendant’s supplemental brief, and April 9, 2010, as the deadline for plaintiffs’ supplemental brief. Defendant filed a 10-page supplemental brief addressing the issues raised during oral argument on March 26, 2010. On April 8, 2010, counsel for plaintiffs sent undersigned counsel for defendant an e-mail alerting undersigned counsel that on March 17, 2010, the Court had apparently sent a fax to counsel for both parties, identifying additional issues that the Court wished the parties to address in their supplemental briefing, and extending the page limit for the supplemental briefs from 10 to 25 pages. Plaintiffs then filed a 25-page supplemental brief on April 9, 2010.

Because undersigned counsel did not receive the Court’s March 17 fax before filing defendant’s supplemental brief, defendant requests leave to file a second supplemental brief, 15

pages in length, addressing the additional issues that the Court identified in its fax.¹ Counsel for defendant has conferred with counsel for plaintiffs, and counsel for plaintiffs indicated that plaintiffs take no position on defendant's request. Because briefing is still underway in this case, in connection with plaintiffs' Motion for Leave to Amend Complaint, and in connection with defendant's Motion to Dismiss and the Court's e-mail of April 16, 2010, plaintiffs will not be prejudiced by this belated response to the Court's March 17 fax. In addition, plaintiffs have had the opportunity to address the additional questions raised by the Court in their 25-page supplemental brief. Defendant therefore respectfully requests leave to file a 15-page second supplemental brief addressing these questions, and that defendant's proposed Second Supplemental Brief, attached hereto, be deemed filed as of the date of the Court's order.

April 22, 2010

Respectfully submitted,

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Assistant Attorney General
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United States Attorney
VINCENT M. GARVEY
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/s/ Kathryn L. Wyer
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¹Undersigned counsel has not been able to determine why the original fax sent by the Court to undersigned counsel was not received, and has not been able to locate that copy of the fax. Undersigned counsel shares a fax number with approximately 100 other attorneys and office support personnel and therefore speculates that the fax was inadvertently misplaced.

CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1.2(8)(b), I hereby certify that the foregoing Motion has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that the foregoing document was served via ECF on counsel of record for plaintiffs in the above-captioned case.

Dated: April 22, 2010

/s/
Kathryn L. Wyer